

House File 565 - Introduced

HOUSE FILE 565

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 258)

A BILL FOR

1 An Act relating to mechanic's liens and the mechanics' notice
2 and lien registry.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 572.8, subsection 1, paragraph b, Code
2 2013, is amended to read as follows:

3 b. The legal description ~~of~~ that adequately describes the
4 property to be charged with the lien.

5 Sec. 2. Section 572.11, Code 2013, is amended to read as
6 follows:

7 **572.11 Extent of lien posted after ninety days.**

8 Liens perfected under section 572.10 shall be enforced
9 against the property or upon the bond, if given, by the owner
10 or by the owner-builder's buyer, only to the extent of the
11 balance due from the owner to the general contractor or from
12 the owner-builder's buyer to the owner-builder at the time of
13 the service of such notice; but if the bond was given by the
14 general contractor or owner-builder, or person contracting with
15 the subcontractor ~~filing~~ posting the claim for a lien, such
16 bond shall be enforced to the full extent of the amount found
17 due the subcontractor.

18 Sec. 3. Section 572.13A, subsections 1 and 2, Code 2013, are
19 amended to read as follows:

20 1. A general contractor or owner-builder who has contracted
21 or will contract with a subcontractor to provide labor or
22 furnish material for the property shall post a notice of
23 commencement of work to the mechanics' notice and lien registry
24 internet website ~~within~~ no later than ten days ~~of~~ after the
25 commencement of work on the property. A notice of commencement
26 of work is effective only as to any labor, service, equipment,
27 or material furnished to the property subsequent to the
28 posting of the notice of commencement of work. A notice
29 of commencement of work shall include all of the following
30 information:

31 a. The name and address of the owner.

32 b. The name, address, and telephone number of the general
33 contractor or owner-builder.

34 c. The address of the property or a description of the
35 location of the property if the property cannot be reasonably

1 identified by an address.

2 *d.* The legal description of that adequately describes the
3 property to be charged with the lien.

4 *e.* The date work commenced.

5 *f.* The tax parcel identification number.

6 *g.* Any other information prescribed by the administrator
7 pursuant to rule.

8 2. If a general contractor or owner-builder fails to
9 post the required notice of commencement of work to the
10 mechanics' notice and lien registry internet website pursuant
11 to subsection 1, within no later than ten days of after the
12 commencement of the work on the property, a subcontractor may
13 post the notice in conjunction with the filing posting of the
14 required preliminary notice pursuant to section 572.13B. A
15 notice of commencement of work must be posted to the mechanics'
16 notice and lien registry internet website before preliminary
17 notices pursuant to section 572.13B may be posted.

18 Sec. 4. Section 572.13A, subsection 3, paragraph c, Code
19 2013, is amended to read as follows:

20 *c.* The notice described in subsection 1 shall be sent to
21 the owner's address as posted to the mechanics' notice and
22 lien registry by the general contractor, owner-builder, or
23 subcontractor. If the owner's address is different than the
24 property address, a copy of the notice shall also be sent
25 to the property address, addressed to the owner if a mailing
26 address has been assigned to the property by the United States
27 postal service.

28 Sec. 5. Section 572.13A, subsection 3, Code 2013, is amended
29 by adding the following new paragraph:

30 NEW PARAGRAPH. *d.* Notices under this section shall not be
31 sent to owner-builders.

32 Sec. 6. Section 572.13B, subsection 1, paragraph g, Code
33 2013, is amended to read as follows:

34 *g.* The legal description of that adequately describes the
35 property to be charged with the lien.

1 Sec. 7. Section 572.13B, subsection 2, Code 2013, is amended
2 to read as follows:

3 2. At the time a preliminary notice is posted to the
4 mechanics' notice and lien registry, the administrator shall
5 send notification to the owner, including the owner notice
6 described in section 572.13, subsection 1, and shall ~~docket~~
7 post the mailing of the notice on the mechanics' notice and
8 lien registry as prescribed by the administrator pursuant
9 to rule. Notices under this section shall not be sent to
10 owner-builders. Upon request, the administrator shall provide
11 ~~an affidavit of mailing~~ proof of service at no cost for the
12 notice required under this section.

13 Sec. 8. Section 572.15, Code 2013, is amended to read as
14 follows:

15 **572.15 Discharge of mechanic's lien — bond.**

16 A mechanic's lien may be discharged at any time by submitting
17 a bond to the administrator in twice the amount of the sum
18 for which the claim for the lien is ~~filed~~ posted, with surety
19 or sureties, to be approved by the administrator, conditioned
20 for the payment of any sum for which the claimant may obtain
21 judgment upon the claim.

22 Sec. 9. Section 572.19, Code 2013, is amended to read as
23 follows:

24 **572.19 Priority over garnishments of the owner.**

25 Mechanics' liens shall take priority ~~of~~ over all
26 garnishments of the owner for the contract debts, whether made
27 prior or subsequent to the commencement of the furnishing of
28 the material or performance of the labor, without regard to the
29 date of ~~filing~~ posting the claim for such lien.

30 Sec. 10. Section 572.22, unnumbered paragraph 1, Code 2013,
31 is amended to read as follows:

32 ~~The administrator shall endorse upon every claim for a~~
33 ~~mechanic's lien posted to the mechanics' notice and lien~~
34 ~~registry internet website the date and hour of posting.~~

35 Each claim posted to the mechanics' notice and lien registry

1 internet website shall be properly indexed and shall contain
2 the following items:

3 Sec. 11. Section 572.22, subsection 5, Code 2013, is amended
4 to read as follows:

5 5. The legal description ~~of~~ that adequately describes the
6 property to be charged with the lien.

7 Sec. 12. Section 572.23, subsection 2, Code 2013, is amended
8 to read as follows:

9 2. If satisfaction is not acknowledged within thirty days
10 after service of the demand in writing, the party serving
11 the demand or causing the demand to be served may file for
12 record with the administrator a copy of the demand with proofs
13 of service attached and endorsed and, in case of service
14 by publication, a personal affidavit that personal service
15 could not be made within this state. Upon completion of the
16 requirements of this subsection, the ~~record~~ posting shall be
17 constructive notice to all parties of the due forfeiture and
18 cancellation of the lien. Upon the ~~filing~~ posting of the
19 demand with the required attachments, the administrator shall
20 mail a date-stamped copy of the demand to both parties.

21 Sec. 13. Section 572.28, subsection 1, Code 2013, is amended
22 to read as follows:

23 1. Upon the written demand of the owner served on the
24 ~~lienholder claimant~~ claimant requiring the ~~lienholder~~ claimant to
25 commence action to enforce the lien, such action shall be
26 commenced within thirty days thereafter, or the lien and all
27 benefits derived therefrom shall be forfeited.

28 Sec. 14. Section 572.30, subsection 2, Code 2013, is amended
29 to read as follows:

30 2. Within fifteen days after receiving notice of nonpayment
31 the general contractor or owner-builder gives a bond ~~or makes~~
32 ~~a deposit with the administrator~~, in an amount not less than
33 the amount necessary to satisfy the nonpayment for which notice
34 has been given under this section, and in a form approved
35 by ~~a judge of the district court~~ the administrator, to hold

1 harmless the owner or person having the improvement made from
2 any claim for payment of anyone furnishing labor or material
3 for the improvement, other than the general contractor or
4 owner-builder.

5 Sec. 15. Section 572.31, Code 2013, is amended to read as
6 follows:

7 **572.31 Cooperative and condominium housing.**

8 A lien arising under this chapter as a result of the
9 construction of an apartment house or apartment building which
10 is owned on a cooperative basis under chapter 499A, or which is
11 submitted to a horizontal property regime under chapter 499B,
12 is not enforceable, notwithstanding any contrary provision of
13 this chapter, as against the interests of an owner in a unit
14 contained in the apartment house or apartment building acquired
15 in good faith and for valuable consideration, unless a lien
16 statement specifically describing the unit is ~~filed~~ posted
17 under section 572.8 within the applicable time period specified
18 in section 572.9, but determined from the date on which the
19 last of the material was supplied or the last of the labor was
20 performed in the construction of that unit.

21 Sec. 16. Section 572.33A, Code 2013, is amended to read as
22 follows:

23 **572.33A Liability of owner to general contractor —**
24 **commercial construction.**

25 1. An owner of a building, land, or improvement upon which
26 a mechanic's lien of a subcontractor may be ~~filed~~ posted, is
27 not required to pay the general contractor for compensation
28 for work done or material furnished for the building, land,
29 or improvement until the expiration of ninety days after the
30 completion of the building or improvement unless the general
31 contractor furnishes to the owner one of the following:

32 ~~1-~~ a. Receipts and waivers of claims for mechanics' liens,
33 signed by all persons who furnished material or performed labor
34 for the building, land, or improvement.

35 ~~2-~~ b. A good and sufficient bond to be approved by the

1 owner, conditioned that the owner shall be held harmless from
2 any loss which the owner may sustain by reason of the ~~filing~~
3 posting of mechanics' liens by subcontractors.

4 2. This section applies only to commercial construction
5 properties.

6 Sec. 17. Section 572.34, Code 2013, is amended to read as
7 follows:

8 **572.34 Mechanics' notice and lien registry —~~residential~~**
9 **construction.**

10 1. A mechanics' notice and lien registry is created and
11 shall be administered by the administrator. The administrator
12 shall adopt rules pursuant to chapter 17A for the creation and
13 administration of the registry.

14 2. The mechanics' notice and lien registry shall be
15 accessible to the general public through the administrator's
16 internet website.

17 3. The registry shall be indexed by owner name, general
18 contractor name, mechanics' notice and lien registry number,
19 property address, legal description, tax parcel identification
20 number, and any other identifier considered appropriate as
21 determined by the administrator pursuant to rule.

22 4. ~~A general contractor, owner-builder, or subcontractor~~
23 Any person who posts fictitious, forged, or false information
24 to the mechanics' notice and lien registry shall be subject
25 to a penalty as determined by the administrator by rule in
26 addition to all other penalties and remedies available under
27 applicable law.

28 5. A person may post a correction statement with respect
29 to a record indexed ~~in~~ on the mechanics' notice and lien
30 registry internet website if the person believes the record is
31 inaccurate or wrongfully posted.

32 6. The administrator shall charge and collect fees as
33 established by rule necessary for the administration and
34 maintenance of the registry and the registry's internet
35 website. The administrator shall not charge a ~~filing~~ posting

1 fee for a preliminary notice required pursuant to this chapter
2 that exceeds the cost of sending such notice by certified mail
3 with restricted delivery and return receipt. The administrator
4 shall not charge a ~~filing~~ posting fee for a mechanic's lien
5 that exceeds forty dollars.

6 7. Notices may be posted to the mechanics' notice and
7 lien registry electronically on the administrator's internet
8 website, or may be sent to the administrator for posting
9 by United States mail or facsimile transmission, or other
10 alternate method as provided by the administrator pursuant to
11 rule. Notices received by United States mail or facsimile
12 transmission shall be posted by the administrator to the
13 mechanics' notice and lien registry within three business days
14 of receipt.

15 8. Mechanics' liens may be posted to the mechanics' notice
16 and lien registry electronically on the administrator's
17 internet website or may be sent to the administrator for
18 posting by United States mail. Liens received by United States
19 mail shall be posted by the administrator to the mechanics'
20 notice and lien registry within three business days of receipt.

21 9. The administrator shall send a receipt acknowledging a
22 notice or lien submitted by United States mail or facsimile
23 transmission, as provided by the administrator by rule.

24 10. Information collected by and furnished to the
25 administrator in conjunction with the submission and posting of
26 notices pursuant to sections 572.13A and 572.13B shall be used
27 by the administrator solely for the purposes of the mechanics'
28 notice and lien registry.

29 11. Registration under chapter 91C shall not be required in
30 order to post a notice or a lien under this chapter.

31 12. A preliminary notice that remains posted on the
32 mechanics' notice and lien registry internet website two
33 years after the date of posting shall be declared inactive by
34 the administrator, unless renewed. A notice of commencement
35 of work, if there are no related active postings, shall be

1 declared inactive two years from the date of posting, unless
2 renewed. The administrator shall establish a process for the
3 removal of inactive notices and for the renewal of notices
4 pursuant to rule.

5 ~~12.~~ 13. The administrator shall make, or cause to be made,
6 preservation duplicates of mechanics' notice and lien registry
7 records, including records stored in a computer database. Any
8 preservation duplicate record shall be accurate, complete, and
9 clear, and shall be made, preserved, and made accessible to the
10 public by means designated by the administrator by rule.

11 EXPLANATION

12 This bill makes conforming language corrections relating
13 to the posting of precommencement and preliminary notices and
14 mechanic's liens on the mechanics' notice and lien registry
15 (registry) and related civil enforcement actions, to be
16 consistent with changes made in HF 675 (2012).

17 The bill also amends provisions relating to certain property
18 information required for precommencement and preliminary
19 notices.

20 The bill specifies that general contractors and
21 owner-builders do not have to send precommencement notices to
22 owner-builders.

23 The bill requires the administrator (secretary of state) to
24 provide proof of service for notices posted on the registry and
25 eliminates the requirement that the administrator endorse every
26 claim for a mechanic's lien posted on the registry.

27 The bill specifies that each claim posted to the
28 registry internet website shall be properly indexed by the
29 administrator.

30 The bill provides that in a civil action by a subcontractor
31 or owner against a general contractor or owner-builder, a
32 bond given by a general contractor or owner-builder shall be
33 approved by the administrator instead of the court.

34 The bill provides that the posting by any person of
35 fictitious, forged, or false information to the registry is

1 subject to a penalty as determined by the administrator.
2 The bill provides that a preliminary notice that remains
3 posted on the mechanics' notice and lien registry internet
4 website two years after the date of posting shall be declared
5 inactive by the administrator, unless renewed. A notice of
6 commencement of work, if there are no related active postings,
7 shall be declared inactive two years from the date of posting,
8 unless renewed. The administrator is also required to
9 establish a process for the removal of inactive notices and for
10 the renewal of notices pursuant to rule.